

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

DECISION AND ORDER
01-CR-192A

FRANK J. "BUTCHIE" BIFULCO,

Defendant.

Currently before the Court is defendant Frank J. "Butchie" Bifulco's motion to take depositions to perpetuate testimony, pursuant to Rule 27 of the Federal Rules of Civil Procedure. Defendant states that he intends on filing a motion to set aside his sentence, pursuant to 28 U.S.C. § 2255, on or before October 11, 2006. He seeks to take the depositions of two of the witnesses that testified against him at trial: Elizabeth Tata and Angelo Albert. The government opposes defendant's motion.

The Court finds that the defendant's motion must be denied. Defendant has failed to offer an adequate explanation as to why he is presently unable to bring his § 2255 motion. Nor has the defendant offered an adequate explanation as to why the individuals he seeks to depose will be any less available after he files his § 2255 motion. For example, he does not allege that they are near death or are in danger of becoming incapacitated in the near future.

Accordingly, the Court denies defendant's motion to take depositions to perpetuate testimony.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: September 14 , 2006